

**CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE
CERTIFIED FARMERS' MARKET ADVISORY COMMITTEE**

Meeting Minutes

March 8, 2004

Sacramento, California

MEMBERS

Scott Beylik
Dennis Peitso
Russell Hall
Steven Erickson
Gene Etheridge
Edith Clark
Jerry Gonce
Gail Hayden
Lynn Bagley
Harry Brown-Hiegel
Greta Dunlap
Howell Tumlin
Scott Hudson
Karol Jo Kappel

ALTERNATES/NON VOTING

Stephen Bird
Barbara Gonce
Fred Delgado
Jane Allen
Mary Hillebrecht
Rick Landon

MEMBER EXCUSED

Jim Russell
Mary Lou Weiss
Earl McPhail

CDFA

Janice Price
Steve Mauch
Rick Jensen
Susan Shelton

INTERESTED PARTIES

Kayleigh Bird
Max Eggman
Jane Eggman
Doug Lewis, Lewis Family Farm/
PCFMA Board of Directors
Randii MacNear, DFM CA Fed.
Gary Gentry, CFM Manager
Louise Dyble

ITEM 1: ROLL CALL

Jerry Gonce called the meeting to order. Janice Price called the roll and a quorum was established. Greta Dunlap led the committee in the pledge of allegiance.

ITEM 1A: INTRODUCTION OF GUESTS

For the benefit of the new committee members, each person introduced themselves.

ITEM 2: APPROVAL JANUARY 12, 2004 MEETING MINUTES

MOTION: Harry Brown-Hiegel moved to approve the minutes as submitted. Dennis Peitso seconded. The motion passed, Gail Hayden abstained.

ITEM 3: APPROVAL OF AGENDA

MOTION: Greta Dunlap moved to approve the agenda as submitted. Edith Clark seconded. The motion passed unanimously.

ITEM 4: REPORTS

A. CFM REMITTANCE FEE AND DELINQUENT MARKET REPORT: 1st, 2nd, AND 3rd QUARTERS, 2003 – JANICE PRICE

Reports were included in the committee packet.

Gail Hayden stated that the markets have grown since last year and questioned why the assessments have not changed significantly. Janice stated that this would need further review; however, she speculated that since most names from the third quarter report are unfamiliar the newer markets might still be in the process of paying.

B. CDFA BUDGET REPORTS: DECEMBER 2003 & JANUARY 2004 – JANICE PRICE

Reports included in committee packet. No discussion at this time.

C. CDFA TASK REPORT – JANICE PRICE

Reports included in committee packet. No discussion at this time.

D. CFMAC APPOINTMENTS – JANICE PRICE

Effective January 23, 2004, there were new two-year term appointments made. Included in the committee packet is a letter that lists all the new appointments and all the re-appointments. Janice explained that the alternate Agricultural Commissioner spot is still vacant; however, she expects a nomination from the Agricultural Commissioners after their next conference.

E. AB 1726 CLARIFICATION – JANICE PRICE

This bill was introduced last year and has since been amended twice. On February 25, 2004, the bill was amended to extend the repeal date to January 1, 2007, for the collection of market fees. Janice explained that this bill imposes a late penalty charge on operators of a farmers' market who fail to pay the market fee of \$.60 per farmer per day on time. The bill would also extend the repeal date to January 1, 2007, authorizing the Secretary of CDFA and the County Agricultural Commissioners to impose civil penalties in accordance with any violations of individuals that are not complying with the law.

Janice made a clarification from the last committee meeting regarding this bill. She had stated that this bill extended the repeal date to do away with the CFM program. In actuality, it would not have ended the program. However, with extending the repeal date the Department would have lost the authority to take legal action against someone who was not complying with the law as of January 1, 2005.

F. CDFA RECENT DECISION ON NON-CERTIFIABLE AGRICULTURAL PRODUCTS
APPEAL – JANICE PRICE

Janice Price related the findings on a recent CDFA appeal where a county took action against a certified producer (CP) who sold a processed product, similar to humus, at a CFM. The county proposed a three-month suspension and a \$401 fine. At the conclusion of the hearing, the Hearing Officer removed the suspension and increased the fine to \$700.

The CP appealed the decision. This case presents a challenging issue associated with Direct Marketing. Processed foods fall within the definition of non-certifiable agricultural products. Non-certifiable agricultural products must be made with products produced by the holder of the CP Certificate in the market.

For example, a CP cannot legally sell any processed products, such as “veggie nuggets” that include ingredients that they do not produce. The product in this case contained walnut oil and cilantro that the appellant did not produce. The CDFA guidelines allow for use of a limited number of ingredients that act as a preservative or are considered essential in the preparation of the product. As the appellant admitted that both were flavorings, it was found that neither the walnut oil nor cilantro qualifies for this exemption.

The appellant argued that CDFA’s policy is vague and contradictory. In fact, the policy is not vague, but the application of it by producers and managers is difficult.

The written discussion says, in part: “If the CDFA has a policy concerning the sale of processed products that cannot be understood and effectively implemented, then no processed products should be sold under the umbrella of the CFM Program. In other words, if it exists, it does not empower the CP to establish their own unilateral standards in regard to whether they can sell such products as products of their own production. The CDFA must have standards by which it can defend such sales as being consistent with the legal requirements of the program.”

The CDFA granted the appeal in regard to the amount of the civil penalty imposed on the appellant by the respondent reducing it from \$700 to \$401. The CDFA upholds the decision of respondent in all other respects.

A general committee discussion ensued regarding the general guidelines that were made at the beginning of the CFM program and whether those were still to be used. There was a concern that this decision did not support those guidelines. Rick Jensen

stated that the Department's position is to continue to follow the guidelines and when there is a blatant violation, such as this, action should be taken.

G. AGRICULTURAL COMMISSIONERS

Rick Landon stated that the Agricultural Commissioners Interim Conference is March 17th and 18th. Scott Hudson added that proposed CFM program changes would be discussed at this conference.

H. LONG RANGE PLANNING SUB-COMMITTEE – JANE ALLEN, CHAIR

Jane Allen presented the sub-committee's mission statement. It reads:

“To obtain a picture of the industry from its participants and to provide information and recommendations to the CFMAC so that the secure future of the industry continues to allow farmers to market directly to consumers.”

Harry Brown-Hiegel asked that “certified” be added in front of “farmers”. The mission statement was adopted as modified.

Jane reported that out of the approximately 3,500 surveys sent to Commissioners, certified producers, and CFM's, 1,155 were sent back. Louise Dyble was introduced to the committee. She is a post-doctoral student at UC, Berkeley and is working on an alternative food project. As a part of her project, she has agreed to analyze the survey data and then give the committee a report of the findings.

I. FINANCE SUB-COMMITTEE – SCOTT BEYLIK, CHAIR

All related reports will be discussed under 5.c. later in the meeting.

J. NURSERY STOCK/CUT FLOWERS SUB-COMMITTEE, MARY LOU WEISS, CHAIR

No report at this time.

K. MARKET STANDARDS/MANAGER CERTIFICATION SUB-COMMITTEE, HOWELL TUMLIN, CHAIR

All related reports will be discussed under 5.d. and 5.e. later in the meeting.

M. NON-CERTIFIABLE AGRICULTURAL PRODUCTS SUB-COMMITTEE, JIM RUSSELL, CHAIR

No report at this time.

N. CHAIRMAN'S REPORT – JERRY GONCE

Jerry Gonce asked Gail Hayden to report on the North American Farmers' Direct Marketing Conference. Gail stated that this is a coalition of members from the United States, Mexico and Canada. It was a successful conference with 600 – 700 people in attendance. A.G. Kawamura gave the opening talk, there were on-farm tours, tours of farmers' markets, and the Farmers Market National Coalition had a one-day workshop.

ITEM 5: COMMITTEE BUSINESS

A. PRIORITIZE TOP 10 QUESTIONS OF INDUSTRY SURVEYS – JANE ALLEN

This agenda item no longer requires CFMAC action, chiefly because Louise Dyble has agreed to analyze all surveys, not just a portion of them. No discussions at this time.

B. INDUSTRY SURVEY RESULTS TO SUPPORT CDFA MARKET FEE INCREASE PROPOSAL – JANE ALLEN

Jane Allen presented the committee with a worksheet that gave a very rough indication of the survey responses to the question regarding the possible fee increase. Initial review shows that some CFMs and CPs would be open to the increase.

C. CDFA PROPOSED 2004/2005 BUDGET – SCOTT BEYLIK

Scott Beylik presented the committee with a copy of the Certified Farmers' Market Inspection Projection and Proposals budget allocation, amended March 1, 2004. It was pointed out that \$11,400 in expenses was paid to the Attorney General's office. For informal hearings, \$3,500 was budgeted as a line item for a contract with OAH. This is the first time this expense has been allocated to the CFM program. In previous years the Standardization Program has paid this fee.

A discussion ensued regarding the increase in legal fees. Originally \$.10 of the \$.60 fee was thought to adequately cover legal expenses. Attorney General fees, combined with the fact that over the last two years the program has been more active in developing and moving ideas/regulations, has combined to indicate the \$.10 amount was underestimated.

Rusty Hall asked for clarification on what is covered under the "Salaries" line item. Janice explained that the amount listed is for her salary, a small percentage of the salary for the Branch Secretary, a Staff Services Analyst, a Computer Programmer, and the Branch Chief.

Discussion ensued regarding a fee increase from \$.60 to \$1.00. Doug Lewis from the PCFMA Board of Directors stated that many producers he knew would welcome the increase if they saw immediate benefits, such as increased enforcement, etc. Edith Clark stated that the committee should look toward non-agricultural vendor assessments, even if they are voluntary.

Rick Jensen explained that the program debt and continued expenses have had to be justified to the Executive Office. Since the total budget, as submitted, was in excess of the current program revenue the committee discussed where cuts could be made.

MOTION: Scott Beylik moved to approve the budget as submitted, with the exception of decreasing the travel line item from \$13,500 to \$10,000. The budget total would then become \$171,627. Lynn Bagley seconded. The motion passed with ten in favor and one opposed.

D. MARKET STANDARDS/MANAGER CERTIFICATION MISSION STATEMENT – HOWELL TUMLIN

Howell Tumlin presented the sub-committee's mission statement. It reads:

"It is the intent of the Market Standards/Manager Certification Subcommittee to identify, study and make recommendations to the CFMAC regarding issues related to the operations of certified farmers' markets and the practices of market operators, including certification of market managers."

MOTION: Howell Tumlin moved to approve the mission statement as read. Edith Clark seconded. The motion passed unanimously.

E. PROPOSED REGULATION TO PROHIBIT CFMs FROM CHARGING FEES FOR VENDORS SELLING AGRICULTURAL PRODUCTS NOT CA GROWN IN PROXIMITY TO A CFM – HOWELL TUMLIN

On behalf of the sub-committee, Howell proposed that two items be recommended to the Secretary for addition into the State regulations. The first would deal with the sale of non-California products, and the second the sale of certifiable products. Howell read the statements. Mary Hillebrecht asked that the phrase "give permission, or allow" be added to both proposed regulations. Howell accepted these as friendly amendments. A lengthy discussion ensued regarding these possible amendments.

The first regulation would read:

"1392.9 (c) A certified farmers' market operator or designated agent shall not charge a fee, give permission, or allow an individual or entity for the privilege of offering for sale any agricultural product not grown in California where the offering is made outside of but in proximity to a certified farmers' market."

MOTION: Howell Tumlin moved to recommend this regulation for adoption. Dennis Peitso seconded. The motion passed with seven in favor and four opposed.

Scott Beylik requested that the minutes reflect the individual members' votes. Jerry Gonce, as chairman, denied this request. A vote was taken to see if the majority of the committee agreed with Jerry's ruling. Seven agreed and four disagreed. The decision stood.

F. PROPOSED REGULATION TO PROHIBIT CFMs FROM CHARGING FEES FOR VENDORS SELLING CERTIFIED AGRICULTURAL PRODUCTS IN PROXIMITY TO A CFM – HOWELL TUMLIN

The second regulation would read:

"1392.9 (d) A certified farmers' market operator or designated agent shall not charge a fee, give permission, or allow an individual or entity for the opportunity to resell or display, certifiable agricultural products where the offering for sale or display occurs outside of but in proximity to a certified farmers' market. In all cases, certifiable agricultural products must be sold within the area designated as the certified farmers' market."

MOTION: It was moved that the matter of 1392.9 (d) be laid on the table and put back on the agenda at a later time. Lynn Bagley seconded. The motion failed with three in favor and nine opposed.

MOTION: Howell Tumlin moved to recommend this regulation for adoption. Edith Clark seconded. The motion passed with nine in favor, three opposed, and one abstention.

G. REVIEW OF SUB-COMMITTEE MEMBERS – JERRY GONCE

As new committee members were present all were asked if they would like to join any of the sub-committees.

MOTION: It was moved to add Scott Beylik and Dennis Peitso to the Finance Sub-Committee. The motion was seconded and approved unanimously.

MOTION: Jane Allen moved to add Rusty Hall, Stephen Bird, and Steve Erickson to the Long Range Planning Sub-Committee. The motion was seconded and approved unanimously.

MOTION: It was moved to add Dennis Peitso to the Market Standards/Manager Certification Sub-Committee. The motion was seconded and approved unanimously.

MOTION: It was moved to add Fred Delgado to the Enforcement/Matrix Sub-Committee. The motion was seconded and approved unanimously.

MOTION: It was moved to add Steven Erickson and Rick Landon to the Non-Certifiable Agricultural Products Sub-Committee. The motion was seconded and approved unanimously.

MOTION: It was moved to add Scott Beylik to the CACASA Coordination Sub-Committee. The motion was seconded and approved unanimously.

H. NEW BUSINESS – DISCUSSION ONLY

Rusty Hall inquired as to Southland's proposed changes to the Agricultural Code. Howell Tumlin explained that Southland had proposed seventeen reforms with the goal to return the program to its original intent. It was decided that a year would be taken to speak with other groups and get more industry feedback. Some of these reforms are pure legislative items that this committee would not handle. Howell will give more updates as more information is obtained.

ITEM 6: MEMBER ROUNDTABLE DISCUSSION – JERRY GONCE

It was requested that the Secretary be invited to the CFMAC July 12th meeting. Jerry stated that he is trying to get an appointment to speak with the Secretary and will extend an invitation at that time.

A committee member asked about the moratorium status on new regulations. Janice Price explained that it has been lifted and all proposed regulations would begin to be processed.

ITEM 7: NEXT MEETING MAY 12, 2004 – TORRANCE/NEW AGENDA ITEMS – JERRY GONCE

The next meeting will be held on May 10, 2004, not May 12, 2004, as the agenda states. Agenda items and backup documentation must be in to Janice by April 26, 2004.

ITEM 8: ADJOURNMENT

MOTION: Scott Beylik moved to adjourn the meeting. Edith Clark seconded. The motion passed unanimously.
Respectfully submitted by:

Janice Price, Supervisor
Certified Farmers' Market Program
Inspection and Compliance
Inspection Services